



**Western States Petroleum Association**  
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October 3, 2002

Mr. David Kaiser  
Federal Consistency Coordinator  
Coastal Programs Division  
Office of Ocean and Coastal Resource Management  
National Oceanic and Atmospheric Administration  
1305 East-West Highway, 11<sup>th</sup> Floor  
Silver Spring, MD 20910

Attention: Federal Consistency Energy Review Comments  
(Docket No. 020422093-2093)

Dear Mr. Kaiser:

The Western States Petroleum Association (WSPA) is a non-profit trade association representing a full spectrum of companies which explore for, produce, refine, transport, and market petroleum products in the Western United States. We are writing to express our thoughts on the proposed rulemaking regarding federal consistency regulations within the Coastal Zone Management Act (CZMA). The opportunity to refine the partnership between Federal and State agencies available through the consistency process is welcome and appreciated.

As you know, the CZMA requires State coastal management plans (CMPs) to consider the national interest in and give priority to a variety of coastal dependent uses and processes, including energy. We generally concur with the Energy Report's identification of a potential lack of effectiveness with regard to CZMA and the Outer Continental Shelf Lands Act (OCSLA) interaction as it relates to a lack of clearly defined requirements, information needs from Federal and State agencies, in addition to uncertain procedural deadlines.

Specifically, we offer the following suggestions in response to your questions:

*Whether NOAA needs to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.*

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Under the current process, the scope and nature of the information that can be requested of applicants for CZMA review has the tendency to be somewhat vague. This situation can lead to repeated incompleteness letters that request additional information. Even when an applicant has a number of pre-meetings with agencies to determine the scope and nature of the information that will be required, the requirements tend to change over time. This tends to lengthen the overall CZMA review time lines.

We believe efforts to better describe the scope and nature of information will be beneficial. Preparation of a list of the specific information that is required to complete the CZMA process for energy projects is encouraged. The applicants should have access to these lists of informational needs when they are preparing the necessary applications. This approach would assure that all the players understand the type and extent of the information that must be submitted prior to the submission of any application.

The information requirements should be keyed to the approved coastal management plan and enforceable policies of the plan. In some instances, the approved coastal plan has not been amended for many years, and the information requests as well as the state's consistency decision are based on state policies that have not been incorporated into the plan. This undermines the partnership by sidestepping NOAA review of the policies as well as broad public dialogue. By ensuring that the information requests are firmly grounded in the approved plan, NOAA can encourage states to keep their plans current.

*➤ Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards.*

We believe a definitive time frame within which the Secretary of Commerce must issue a decision can be established and would be beneficial, given the standards of the Administrative Procedures Act. At minimum, a known action time frame would give the appellant applicant an understanding of the term of the process.

Additional environmental reviews should not be required for a consistency appeal. Ordinarily, the appropriate level of environmental review already would have been conducted for the underlying permit application. A copy of the completed EA or EIS should be included as part of the administrative record since many of the criteria for a secretarial override involve consideration of environmental issues. It should be clear, however, that the Secretary's role does

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not involve review of the legal sufficiency of the EA or EIS. Rather, the Secretary should rely on the conclusions of the EA or EIS with respect to environmental impacts and mitigations, and should accept the document as sufficient unless a court determines otherwise.

➤ *Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.*

With clear standards regarding the scope and nature of information required for NOAA and state review, and consistent reliance on the enforceable policies of the approved coastal plan, it will be possible to address issues of state concern in the Federal environmental review documents.

➤ *Whether a regulatory provision for a "general negative determination," similar to the existing regulation for "general consistency determinations," 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process.*

The idea of a regulation providing for a general negative determination similar to the existing regulation for general consistency determinations does, indeed have merit. We encourage any process that would allow projects that consistently have no impacts to be addressed in an efficient manner.

➤ *Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EPs and DPPs, whether other associated approvals, air and water permits not described in detail in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.*

Although challenging, it is worthwhile in some cases to consider consolidating multiple federal OCS EP or DPP approvals into a single consistency review. Consolidation would require close cooperation among a number of Federal

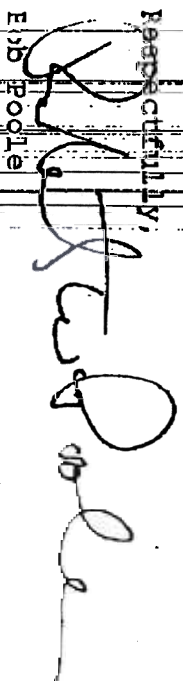
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Agencies to prepare a single consistency package for submission to the State, and in coordinating the timing of permit issuance. However, it is unlikely this type of consolidation could apply to all permits.

Respectfully,



E. J. Poole  
Coastal Environmental Coordinator